IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

WP(C).No. 24171 of 2007(C)

OS.77/2006 of SUB COURT, PALA

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PETITIONER:

DEVASIA EAPPEN, KAPPIL NADUCKUTHAZHE,
LALAM KARA AND VILLAGE MEENACHIL TALUK.

BY ADV. SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.

RESPONDENT:

P.T.THOMAS, PLATHOTTATHIL HOUSE,
ANTHINADU KARA, LALAM VILLAGE,
MEENACHIL TALUK.

BY ADV. SRI.P.C.HARIDAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.24171/2007 C

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE PLAINT DTD. 8/06/2006 BY THE RESPONDENT.

EXT.P2: COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER DTD. 20/10/2006.

EXT.P3: COPY OF THE CHEQUE DTD. 20/03/2006.

EXT.P4: COPY OF THE AFFIDAVIT AND THE APPLICATION DTD. 5/06/2007.

EXT.P5: COPY OF THE ORDER DTD. 4/07/2007 IN I.A.NO.867 OF 2007 IN O.S.NO.77 OF 2006, SUB COURT, PALA.

RESPONDENT'S EXHIBIT:

EXT.R1(A): COPY OF THE OBJECTION FILED BY THE RESPONDENT TO EXT.P3.

/TRUE COPY/

P.A.TO JUDGE

KSS

M.N. KRISHNAN, J.

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W.P.C. NO. 24171 OF 2007

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Dated this the 26th day of September, 2007.

J U D G M E N T

This writ petition is preferred against Ext.P5 order passed by the learned Subordinate Judge, Pala in I.A.867/07 in O.S.77/06. The said application was filed by the defendant to send the cheque which is alleged to bear the signature of the defendant on the reverse side of the cheque for comparison on the ground that he had not put his signature and it is only a forgery done by the plaintiff to substantiate his case. The brief facts necessary for the disposal of the writ petition are as follows.

2. It is the case of the plaintiff that the defendant had approached him for an amount of Rs.5 lakhs to be deposited in the Bank in connection with his affairs and the defendant had executed a promissory note and thereafter the plaintiff has issued a cheque in his favour and that the defendant had encashed that cheque and thereby had

received the consideration. The defendant would contend that there had been different transactions between the plaintiff and the defendant and the plaintiff is in the habit of taking blank signed papers for the said purposes and that he had used one of such signatures for creating a promissory note and instituted a suit of this nature. It is also contended by him that he had never affixed his signature on the reverse side of the cheque.

3. Now, the defendant wants to establish his case by eliciting an expert opinion to the effect that the signature seen on the reverse side of the cheque, which had been encashed, does not contain his signature which will lead to the probability that the whole transaction is not as contended by the plaintiff. At this stage no Court can go into the merits or demerits of such contention since lot of allegations are made against the plaintiff and it is specifically averred that the reverse side of the cheque does not contain his

signature. It is only just and equitable that a comparison of the signature is made so that the Court will be able to make, with the materials available before it, an over all analysis of the entire materials in the said back drop of the contentions raised in this particular case. The final result of the case would depend upon the total appreciation of the matter. So for the purpose of arriving at such a decision it is only just that the request by the defendant is allowed. If the original of the cheque is available with the alleged signature of the defendant before Bank it be summoned and the matter be sent for comparison by an expert. Making it very clear that the admitted signature of the defendant which is to be sent for comparison must be in anterior point of time and not a specimen hand writing taken at a later stage. In the initial stage the expenses has to be met by the defendant and ultimate liability will depend upon the result of the case. I also direct the Court below to direct the parties to suggest

the name of an expert who will be in a position to compare the signature and handwriting, as expeditiously as possible and submit a report. Therefore, the order under challenge is set aside and Ext.P4 interlocutory application is allowed as stated above.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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